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Please find below and/or attached an Office communication concerning this application or proceeding.

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JERRY.SHORMA@HP.COM

ipa.mail@hp.com

laura.m.clark@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIAN L. STRUBLE

Appeal 2009-008620
Application 09/894,213
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Christian L. Struble (Appellant) seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1, 6-9, 16, and 19-30. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.²

THE INVENTION

The invention is “a system and method that controls the display of advertisements in relation to time and weather information.” Specification 1:7-8.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for controlling the presentation of advertisements, the method being practiced by a local computing device having a processing device and a memory, the method comprising:
 receiving local weather condition information from a sensing unit that is separate from the computing device;
 determining which advertisements are appropriate for presentation using the local computing device and based upon the received weather condition information; and
 facilitating presentation of appropriate advertisements on a local display unit.

² Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed Feb. 10, 2005) and Reply Brief (“Reply Br.,” filed Nov. 18, 2008), and the Examiner’s Answer (“Answer,” mailed Oct. 7, 2008).

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Thibadeau	U.S. 5,565,909	Oct. 15, 1996
Helferich	U.S. 6,636,733 B1	Oct. 21, 2003

The Examiner took official notice that “it is old and well known in gas stations and the like to have advertisements display on a fuel pump in order to induce the customers to make purchases while pumping gas.” Answer 4-5.

The following rejection is before us for review:

1. Claims 1, 6-9, 16, and 19-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Thibadeau and Helferich.

ISSUES

The issue is whether claim claims 1, 6-9, 16, and 19-30 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Thibadeau and Helferich. The major issues are whether the prior art teaches receiving local weather condition information from a sensing unit that is *separate* from the local computing device.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Thidabeau describes a digital barometer that is used to determine the altitude of a particular user terminal box in order to set the terminal box to filter messages based on a three dimension geographic location of the box. Col. 3, ll. 13-61.
2. Thidabeau states:

For vehicles, a portable geographic reporting unit, such as a Global Positioning System (GPS) unit can be supplemented with an altitude sensing unit to encode elevation data. This position sensing means is coupled to the set-top unit to provide the necessary location information.

Col. 20, ll. 36-41.
3. Helferich describes that an email server 16 receives local temperature information from a sensor on a mobile phone 10. Col. 9, l. 66 - 10, l. 16.

ANALYSIS

The Appellant argues that Thibadeau does not describe receiving weather information from a sensing unit that is *separate* from the claimed local computing device. App. Br. 10-12 and Reply Br. 2-5. The Examiner responds that Thidabeau teaches a barometer in column 3, lines 13-61. Answer 6.

However, in column 3, lines 13-61, Thidabeau describes a digital barometer that is used to determine the altitude of a particular user terminal box in order to set the terminal box to filter messages based on a three dimension geographic location of the box. FF 1. This passage does not describe whether the barometer is separate or not from the terminal box. However, Thidabeau does state:

For vehicles, a portable geographic reporting unit, such as a Global Positioning System (GPS) unit can be supplemented with an altitude sensing unit to encode elevation data. This position sensing means is coupled to the set-top unit to provide the necessary location information.

FF 2. Though not explicitly stated, the Examiner seems to consider the terminal (*i.e.* set-top box) of Thidabeau to be the claimed local computing device. Answer 4-5. However, Thidabeau does not teach a barometer being separate from the terminal box. Further, we note that Helferich does not teach a sensing unit that is separate from a local computing device. The Examiner does not rely upon Helferich to teach a sensing unit that is separate from a local computing device and provides no other explanation of how this limitation is taught. We note that Helferich does teach a temperature sensing unit which is mounted to a mobile phone and not separate from the mobile phone. FF 3. Helferich also teaches an email server that uses the temperature information to send an email message that included a temperature appropriate advertisement, but is silent as to whether the email server is local or not. FF 3.

Accordingly, we find that the Appellant has overcome the rejection of claim 1, and dependent claims 6-9, 20, 21, and 24, dependent thereon, under 35 U.S.C. §103(a) over Thibadeau and Helferich.

Independent claim 16 recites a similar limitation, and the Examiner rejected claim 16 using the same rationale. Answer 4-5. Accordingly, for the same reasons, we find that the Appellant has overcome the rejection of claim 16, and dependent claims 19, 22, 23, and 25, dependent thereon, under 35 U.S.C. §103(a) over Thibadeau and Helferich.

Independent claims 26 and 29 recite receiving local weather forecast information with the local computing device that is collected by and

transmitted from a remote server via a network. The Examiner rejected these claims using the same rationale as used to reject claim 1. Answer 4-5. Accordingly, for the same reasons, we find that the Appellant has overcome the rejection of claims 26 and 29, and dependent claims 27, 28, and 30 dependent thereon, under 35 U.S.C. §103(a) over Thibadeau and Helferich.

DECISION

The decision of the Examiner to reject claims 1, 6-9, 16, and 19-30 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REVERSED

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS CO 80528